

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 14, 2006

STATE OF TENNESSEE v. MURIEL L. BUTTS, ALIAS

Direct Appeal from the Criminal Court for Knox County
No. 78921 Ray L. Jenkins, Judge

No. E2005-02485-CCA-MR3-CD - Filed July 13, 2007

A jury found the defendant, Muriel L. Butts, Alias, guilty of simple possession of marijuana, third offense (Class E felony). On appeal, the defendant contends: (1) the evidence was insufficient to support a conviction; (2) the trial court erred in denying the defendant's motion to suppress; (3) the trial court erred in sentencing the defendant to the maximum of six years; and (4) the judgments of the prior convictions were insufficient to enhance his punishment, absent any proof that the defendant was advised in the former pleas that the convictions could later be used against him to enhance his punishment. After careful review, we affirm the judgment from the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Brandt W. Davis, Knoxville, Tennessee (on appeal); and Mark E. Stephens, District Public Defender, and Paul Hensley, Assistant Public Defender (at trial), for the appellant, Muriel L. Butts, Alias.

Paul G. Summers, Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Ta Kisha Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant was a passenger in a car that was stopped for various traffic violations, and he was found to possess a small amount of marijuana. The defendant was cited into court on simple possession of marijuana and allowed to leave with his friends. Later, the defendant was indicted on simple possession of marijuana, having two previous drug convictions.

First, the defendant challenges the sufficiency of the evidence to support his convictions. When an accused challenges the sufficiency of the evidence, this court must review the record to determine if the evidence adduced during the trial was sufficient "to support the finding by the trier

of fact of guilt beyond a reasonable doubt.” Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Brewer, 932 S.W.2d 1, 18 (Tenn. Crim. App. 1996).

In determining the sufficiency of the evidence, this court does not reweigh or reevaluate the evidence, State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978), nor may this court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956). To the contrary, this court is required to afford the State the strongest legitimate view of the evidence contained in the record, as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Elkins, 102 S.W.3d 578, 581 (Tenn. 2003).

The trier of fact, not this court, resolves questions concerning the credibility of the witness, the weight and value to be given the evidence, as well as all factual issues raised by the evidence. Id. In State v. Grace, the Tennessee Supreme Court stated that “[a] guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” 493 S.W.2d 474, 476 (Tenn. 1973).

Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); Grace, 493 S.W.2d at 476.

The criminal offense of simple possession of a controlled substance is codified at Tennessee Code Annotated section 39-17-418. The statute states in pertinent part that “[i]t is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a professional practice.” T.C.A. § 39-17-418(a). “A violation under this section is a Class E felony where the person has two (2) or more prior convictions under this section.” T.C.A. § 39-17-418(e).

At trial, the testimony revealed that the defendant was a passenger in a car stopped because of traffic violations. The officer requested and was allowed to check the defendant for any illegal substances. The officer found a small amount of marijuana in the defendant’s back pocket. The officer seized and marked the marijuana, and it was sent to the Tennessee Bureau of Investigation’s laboratory. Jacob White, an employee of the laboratory, testified that the 0.2 grams of plant material tested positive for marijuana.

The defendant testified that he agreed to the officer’s request to search. The officer patted the defendant’s pockets and removed cigarette papers from his back pocket. Inside the cigarette papers was a plastic bag containing a small amount of marijuana. First, the defendant thought the officer planted the drugs on him and was very upset. Later, the defendant explained that a co-passenger, Glennis Hoover, had borrowed the papers from him the day before and returned them

about one hour before they were stopped. He denied having any knowledge of the marijuana and stated he had not smoked marijuana in two years. The jury was also shown a video tape of the stop and subsequent search of this defendant.

The jury returned a verdict of guilty and set a \$250.00 fine for count one of the indictment. The jury was again sworn and directed to consider count two of the indictment, charging that the defendant had previously been convicted of possession of “marihuana” on two occasions.

Contrary to the defendant’s assertion, the State introduced certified copies of two prior possession convictions. The defense offered no proof. Both sides waived closing argument. The jury returned a verdict of guilty and fined the defendant \$2000.

After reviewing the evidence in light most favorable to the State, we conclude sufficient evidence was presented for a rational trier of fact to find all essential elements of the offense beyond a reasonable doubt. It is clearly the jury’s prerogative to believe or not to believe the defendant.

Next, we consider whether the trial court erred in denying the defendant’s motion to suppress. The defendant contends that the police cruiser video of the vehicle, in which he was a passenger, does not contain any evidence of traffic violations; hence, there was no probable cause to stop the vehicle. In the alternative, the defendant contends that the traffic violations were merely a pretext for the stop and were, therefore, illegal.

First, the State contends the defendant failed to establish standing to contest the seizure of the vehicle in which he was a passenger. Before a defendant has standing to challenge a search or seizure, he or she must establish a legitimate expectation of privacy in the place where property is searched. See Rawlings v. Kentucky, 448 U.S. 98, 104-05 (1980); State v. Oody, 823 S.W.2d 554, 560 (Tenn. Crim. App. 1991). We conclude that the defendant does have standing to contest the search.

Second, after review of the videotape, we conclude that the automobile carrying the defendant did drive in a manner that justified the stop. The trial court found that the stop was legal and proper under the circumstances. The arresting officer testified at the hearing on the motion to suppress that he stopped the defendant’s vehicle because it cut into traffic, failed to yield where necessary, and caused other vehicles to brake so it could safely enter the flow of traffic. He further testified that, each time the vehicle cut in front of another vehicle, it forced the other vehicles to brake because there was not a safe distance between them. Our review of the videotape reflects that the arresting officer’s testimony is supported by the videotape evidence. Therefore, the officer had reasonable suspicion to stop the vehicle.

Third, the defendant’s contention that a pretextual search is illegal is not supported by any authority. This issue is waived. Tenn. Ct. Crim. App. R. 10(b); State v. Schaller, 975 S.W.2d 313, 318 (Tenn. Crim. App. 1997).

Next, we consider whether the trial court properly sentenced the defendant. When an appellant challenges the length, range, or manner of service of a sentence imposed by a trial court, the appellate court must conduct a de novo review of the record with a presumption that the sentencing determinations made by the trial court are correct. T.C.A. § 40-35-401(d). This presumption is “conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). If the sentencing court did not do so, then the presumption is removed and the appellate court must review the sentence de novo with no presumption. Id.

This court is obligated to uphold the trial court’s sentencing determinations as to length and manner of service if the record reflects that the trial court followed the sentencing guidelines.

So long as the sentencing court followed the appropriate statutory procedure and imposed a lawful sentence after giving due consideration and proper weight to the factors and principles under law, and so long as the sentencing court’s findings of facts are adequately supported by the record, then [the appellate court] may not modify the sentence, even if actually preferring a different result.

State v. Goodwin, 143 S.W.3d 771, 783 (Tenn. 2004) (citing State v. Pike, 978 S.W.2d 904, 926-27 (Tenn. 1998)). Consequently, on appeal, the burden is on the defendant to show the impropriety of the sentence. T.C.A. § 40-35-401, Sentencing Commission Comments; State v. Goodwin, 143 S.W.3d at 783.

Here, the State read the cases into the record which qualified the defendant to be a career offender, including convictions from 1970, 1971, 1976, 1983, 1985, 1986, and 1998. The convictions ranged from drug offenses to armed robbery. The State noted that, in addition to the other convictions, there were also five convictions for simple possession. The trial court noted that the defendant was a repeated law violator and was on parole at the time of this offense.

Under Tennessee Code Annotated section 39-17-418(e), this sentence arose because the defendant was charged with a Class E felony. Under Tennessee Code Annotated section 40-35-108(a)(3) and (c), the trial court imposed a six-year sentence at 60%, which is the maximum in the range. The trial court had no discretion to do otherwise. The trial court considered the evidence presented during the trial and the sentencing hearing and further relied on the presentence report. The trial court found that confinement was necessary to protect society by restraining the defendant because of his long history of criminal conduct. We conclude that the trial court properly sentenced the defendant as a career criminal. This issue is without merit.

Finally, the defendant contends that the trial court erred in proceeding to sentencing without transcripts of pleas, certified copies of plea agreements, or evidence or testimony indicating that the defendant had been advised that a third drug charge for simple possession would elevate his status to a felony. The State argues that this issue is without merit. We agree.

The defendant mistakenly relies on a statement from our supreme court’s opinion in State v. McClintock, 732 S.W.2d 268, 273 (Tenn. 1987), which states in pertinent part that any court

accepting a plea of guilty must make it clear to the defendant that the resulting judgment of conviction may be used in a subsequent proceeding to enhance the punishment for subsequent offenses. The defendant argues that the State should have presented transcripts, certified copies, and other documents to show that the defendant had been previously advised that his other guilty pleas could be used against him to enhance his exposure. The McLintock opinion does state that a court accepting a guilty plea must advise the defendant that the resulting conviction may be used against him. However, the opinion does not allow a defendant to later challenge the validity of his prior conviction when it is used to enhance a new judgment of conviction. “The rule is that unless invalid on its face, a prior judgment of conviction in a court with jurisdiction cannot be collaterally attacked in a subsequent proceeding in which the challenged conviction is used to enhance punishment.” Id. at 272. The State does not have the burden of producing and entering transcripts for each prior guilty plea conviction.

The authorized route for attacking a facially valid, final judgment of conviction is through the Post-Conviction Procedure Act, not on direct appeal. The present proceeding in the case sub judice, a direct appeal of the defendant’s most recent conviction, is here as in McLintock, not the forum in which the defendant’s constitutional claims may be raised. Collateral attack is not permissible. Id.

Conclusion

Based on the foregoing and the record as a whole, we affirm the judgment from the trial court.

JOHN EVERETT WILLIAMS, JUDGE